UPREME COURT, U. S.

DEC 10 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1969

No. 877

TAMPA PHOSPHATE RAILROAD COMPANY,

Petitioner,

vs

SEABOARD COAST LINE RAILROAD COMPANY,

Respondent

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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FREE PRESS PUB. CO., INC., TAMPA, FLORIDA

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At the time the Petition for Writ of Certiorari herein was put in the mails on Saturday, November 22, 1969, and at the time of its receipt and docketing in the office of the Clerk of this Court on November 24, 1969, Petitioner and its counsel were totally unaware of the proceeding pending in this Court as No. 477, *Seaboard Coast Line Railroad Co., Petitioner v. Brotherhood of Locomotive Engineers, et al, Respondents,* in which certiorari was granted on November 10, 1969.

The office of Petitioner's counsel uses the Lawyers Edition of the Supreme Court reporter, and the stay granted by Mr. Justice Black in what is now No. 477, is reported in Advance Sheet No. 1 of 24 L.Ed 2d at page 23, which is dated November 10, 1969, but did not reach

counsel's offices until some time during the week commencing November 17, 1969, while the petition in No. 877 was being printed, and it did not come to the attention of counsel until late in the afternoon of November 30, 1969, when counsel was examining the advance sheets of the Supreme Court Reporter edition at the library of the Association of the Bar of the City of New York.

Counsel for petitioner proceeded to Washington on Monday, December 1, 1969, where the status of No. 477 was ascertained at the office of the Clerk of this Court. Counsel did not return to his office in Tampa, Florida, until the afternoon of Friday, December 5, 1969, and this supplement is being printed and forwarded to the Clerk at the first available opportunity.

In No. 477, the petitioner, Seaboard Coast Line Railroad Company (Seaboard), takes the position, among others, that the Federal injunction against the state court proceedings secured by the *Brotherhood* (Petition, p. 16) "amounts to a flat violation of the anti-injunction statute, Section 2283 of the Judicial Code." In No. 877, Seaboard took the position before the Court of Appeals for the Fifth Circuit, and will, presumably, take the same position in this Court, that the injunction staying the proceedings in the state courts which Seaboard sought and obtained for its benefit, does not violate §2283 (Brief for Appellee before the Court of Appeals, p. 5).

The facts in the two proceedings are different in that no labor dispute is involved in No. 877, but each involves the same issue as to the applicability of §2283 to a Federal court injunction staying proceedings of the Florida courts:- in No. 477 after the state court has adjudicated, and where no effort was made to follow the orderly procedure that was followed in *Brotherhood of Railroad Trainmen, et al. v. Jacksonville Terminal Co.*, 394 U.S. 369, 89 S.Ct. 1109, 22 L.Ed 2d 344 (March 25, 1969), and in No. 877 *before* the state courts have adjudicated, the Court of Appeals forbidding the state courts to act and thus precluding any orderly procedure, except by the petition to this Court for writ of certiorari, pending in No. 877.

CONCLUSION

The existence of the question as to the applicability of §2283 in the two cases should be called to the attention of the Court, and the Respondent should be given opportunity to respond to this Supplement.

If this matter should have been called to the attention of the Court by Motion under Rule 35 of the Rules of the Supreme Court, Petitioner respectfully prays that this Supplement may be treated as a motion to amend the Petition to include the above statements.

Petitioner further respectfully prays that if certiorari is granted in No. 877 the two cases may be argued together.

Respectfully submitted,

Dated at Tampa, Florida
December 8, 1969

s/ James B. McDonough, Jr.

JAMES B. MCDONOUGH, JR.
DAVID C. G. KERR
of Macfarlane, Ferguson, Allison and Kelly

Attorneys for Petitioner
P. O. Box 1531, 512 Florida Avenue
Tampa, Florida

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 8th day of December, 1969, one copy of the foregoing Supplement to Petition for Writ of Certiorari was furnished by delivery to William A. Gillen, Esq., and one copy also by delivery to James E. Thompson, Esq., both of Messrs. Fowler, White, Collins Gillen, Humkey and Trenam, First Federal Building, Tampa, Florida, attorneys for respondent Seaboard Coast Line Railroad Company and that one copy of the same was furnished by airmail with postage prepaid to the Solicitor General, Department of Justice, Washington, D.C., and in like manner one copy was furnished to John H. D. Wigger, Esq., Department of Justice, Washington, D.C. and in like manner one copy each to Robert W. Ginnane, Esq., and Jerome Nelson, Esq., Counsel for the Interstate Commerce Commission, Washington, D.C., and that copy has also been furnished by air mail with postage prepaid to the Clerk of the United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana.

s/ James B. McDonough, Jr.